PART IV

Section—2-C (ii)

STATUTORY ORDERS ISSUED BY THE STATE GOVERNMENT UNDER THE CENTRAL ACTS AND STATE ACTS.

GOVERNMENT OF KARNATAKA

Social Welfare and Labour Secretariat

Labour Dispute.—Industrial dispute between the workmen and the management of M/s. Mohini Vilas, Mangalore.

Award of the Labour Court, Mangalore—published.

Read the following papers.

(1) Letter No. A/ID-36/73-74, dated 11th December 1973 from Sri H. S. Venkatasubbaiah, Presiding Officer, Labour Court, Mangalore.

BEFORE THE LABOUR COURT AT MANGALORE

Dated 10th December 1973

Reference (ID) (LCM) No. 36 of 1971.

Present:

H. S. Venkatasubbaiah, B.A., LL.B., Presding Officer

Between

I Party.—

A. Narayan Shanbhogue C/o Vanijya Shrymika Sangh, Felix Pai Bazar. Mangalore.

and

II Party.—

The Management of Mohini Vilas, Ganapathi High School Road, Mangalore-1.

AWARD

The Government of Karnataka being of the opinion that an Industrial Dispute exists between the workmen and the management of Mohini Vilas, Ganapathi High School Road, Mangalore, have referred the same for adjudication to this court, by their Order No. FCL 809 LLD 71, dated 27th September, 1971, under Section 10(1) (c) of the Industrial Disputes Act, 1947. The points of dispute as specified in the order of reference are the following :—

> "Is the management of M/s. Mohini Vilas, Ganapathi High School Road, Mangalore-1 justified in dismissing the services of Sri A. N. Shanbhogue with effect from 7th December, 1970 ?
>
> 2. If not, to what relief is the said workman entitled ?"

2. The claim statement of the first party was filed on 17th December 1971. It is stated that the first party workman was working as a supplier in the second party's restaurant for over five years before his services were terminated by an order dated 7th December 1970 and that at the time of termination of his services he was being paid a cash salary of Rs. 40 and he was also provided with free food and that the second party is a renowned high class restaurant having good business and that it employed about 50 employees and that after the judgement of the Supreme Court in respect of the minimum wages fixed for various categories of employment in hotels, which was delivered in the end of the September 1969, the employees of the second party joined the Vanijya Shramika Sangh to secure there rightful wages and that the second party presumably did not like this and while applying the minimum wages to their employees the second party management put several suppliers in the category of

helpers with a view to avoid paying the higher rate of wages and consequently the arrears which it had to pay with effect from 1st July 1967 and that the first party workman though was working as a Supplier,was treated as helper to avoid paying higher wages of a supplier and that this was effected by the second party in the month of April 1970; that aggrieved by the above action of the second party, the first party filed an application before this Court for computation of the difference in minimum wages under Section 33C (2) of the Industrial Disputes Act, 1947 and that the same is still pending on the file of this Court and that the manager of the second called the first party once or twice and pressed him to withdraw the said application and as the first party refused to comply the manager threatened him that the first party would reap the consequences. Further it is stated that when the salary for the month August 1970 was due, the second party offered Rs. 5 less and that he was asked to sign for full acquittance and the first party requested for full payment or at least that a wage slip be given to him showing the deduction and that the second party refused to do either and declined to pay the salary and that similarly, in the salary for the month of September also an illegal deduction of Rs. 2 was made and when protested by the first party the second party refused to pay the salary. Further it is stated that on 18th October 1970 the first party was issued a show-cause notice alleging that though he was asked to put good butter milk in the pot containing 'Thairvade' he had put diluted butter milk and that the first party submitted his explanation denying the charge and that this explanation later was refused to be accepted by the second party when personally delivered and he had to send the same under certificate of posting and that on 28th October 1970 the first party, through the Secretary of the Sangh complained about the non-payment of his salary to the Labour Inspector, Mangalore I Circle who took up the matter for investigation and called a meeting of both the parties at 3-30 P.M. on 12th October 1970 and that the first party applied for a day's leave on 12th October

1970 to appear before the Labour Inspector as directed by him and that on 13th October 1971 the first party was prevented from attending to his normal duties by the managerial and supervisory staff namely, Vasudev Rao, Velayudhan and Padmanabha Rao without assigning any reason and the first party complained to the employer about the incident and wanted to know whether the said persons had acted in pursuance of the employer's order and the above letter was delivered to the second party on 13th November 1970 and that on 14th November 1970 the first pary reported for work and he was not allowed to work and the above fact was also brought to the notice of the second party and that the letter when tried to be delivered was not accepted by the second party and hence it was sent under certificate of posting on the same day and that on the same day the first party received a communication dated 14th November 1970 from the second party in reply to the complaint dated 13th November 1970 and that though the said letter mentioned that a copy of the charge sheet-cum-suspension order dated 13th November along with it, there was no such enclosure and that the charge sheet-cumsuspension order dated 13th November 1970 was received by the first party on 16th November 1970. Further it is stated that by the said charge-sheet the first party was charged for being found working in the supply section disobeying the instructions to do the duty of rubbing the cleaned plates and that the old charge of putting diluted butter milk to the 'Thairvade' was also repeated in it and that this charge was expanded by adding a sentence which the first party was said to have uttered to Sri K. N. Padmanabha Rao and that by the said letter the first party was put under suspension and that on the same day the first party submitted his explanation denying that he was ever asked to do the work of rubbing the cleaned plates and that since he was a supplier, he could not be asked to do the work of rubbing the plates and he also denied having spoken to Sri Padmanabha Rao and he further denied that he had refused to accept the charge sheet when tendered and that on 17th November 1970 the Labour

Inspector again called the first party and the second party with regard to the complaint of the first party about non-payment of salary and persuaded the management to pay him the salary without any deductions. Further it is stated that subsequently a notice of enquiry was issued to the first party and an enquiry was held on 30th November 1970 and that the said enquiry was not held properly as the first party was not allowed to cross-examine the managements witnesses properly and some of the answers were not recorded at all and when the first party requested that the enquiry be postponed to a further date to enable him to bring his witnesses, his request was rejected and the enquiry was abruptly concluded that day and that this irregularity was made known to the enquiry officer by a registered letter dated 30th November 1971 and that the said letter was returned unserved and that in the meanwhile the first party received a dismissal order dated 7th December 1970. It is contended that the dismissal order was unjust and illegal and hence liable to be set aside for the following reasons, namely, (a) the charges levelled against the first party were false, (b) the first party being a supplier could not have been reasonably asked to do the work of rubbing the cleaned plates, (c) the enquiry held was defective as no proper and resonable opportunities were given to the first party to cross-examine the witnesses and adduce his evidence, (d) even on the basis of the enquiry proceedings the charges had not been established, and (e) the findings of the enquiry officer are baseless and perverse. It is pleaded that the action of the second party wants in **bona fides** and the dismissal of the first party amounts to pure victimisation and that during his five years of service his record had been blemishless and clean and that even assuming that he had committed the alleged misconduct the punishment was unconscionably severe and harsh. Therefore, it was prayed that the order of dismissal be set aside and the second party be directed to reinstate the first party with full backwages, continuity of service and all other consequential benefits.

3. The second party has filed objections stating that the dispute raised by the Vaniiya Shramika Sangha is not

an Industrial dispute under the provisions of the Industrial Disputes Act, 1947 as a substantial or majority number of employees of the second party did not support the dispute and therefore, this court had no jurisdiction to adjudicate upon the dispute raised by the Vanijya Shramika Sangha.

4. The second party has denied that the first party workman was as a supplier under the second party for the over five years. If is denied that the second party was having good business and that it did not like its employees joining the Vanijya Sharmika Sangha. It is also denied that the second party management had put several suppliers in the cetegory of helpers with a view to avoid paying the higher rates of wages and it is stated that the first party was working only as a helper. It is denied that the second party and taken action against the first party because he had filed a case against it in the Labour Court and it is also denied that the management of the second party had called the first party once or twice and pressed him to withdraw the said application. It is pleaded that the first party had intentionally damaged and spoiled the food stuff of the restaurant and behaved rudely and violently towards his superiors and a chargesheet-cum-suspension order was issued to him on 13th November 1970 alleging specific charges against him and the said chargesheet-cum-suspension order was sent to the first party by registered post acknowledgement due. The charges alleged against the first party workman were that on 12th November 1970 at about 8-15 P.M. the first party had been instructed by Sri K. N. Padmanabha Rao, supervisor of the second party estblishment that with effect from 13th November 1970 he should attend the duties of rubbing the cleaned plates which were washed and kept for the purpose of serving near the 'thindi-manda' and that on 13th November 1970 instead of attending to the allotted duties of rubbing the cleaned plates kept near the 'thindi-manda', the first party was found helping in the supply section thereby disobeying the instructions given to him and when questioned by Sri K. N. Padmanabha Rao, Supervisor, as to why he failed to obey the instructions given to him regarding his duties, the first party had replied to him saying that he would do the

duties according to his own wishes and not according to the instructions given to him and further he (first party) insisted on doing the helping duties in the supply section and refused to attend the duties of rubbing the plates and continued to carry on the duties of helping in the supply section against the instructions given to him and that on 17th October 1970 at about 10-45 A.M. while he was on duty as a helper in supply section, he was instructed by Sri K. N. Padmanabha Rao, supervisor, to put good butter milk to the vessel containing 'Thairvade' from the stores of the second party as curds was exhausted in vessel containing 'Thairvade', but instead of adding good butter milk, the first party poured butter milk diluted with water to the said 'thairvade' and spoiled the entire remaining 'thairvade' purposely and intentionally and further he abused Sri K. N. Padmanabha Rao saying that "ನನಗೆ ನೀನು ಹೇಳುವುದು ಬೇಡ. ನನಗೆ ನೋಟೀಸು ಕೊಡುವವರು ಬೇರೆ ಜನರು ಇದ್ದಾರೆ". Further it was pleaded that as the explanations offered by the first party were not satisfactory, it was decided to hold a written enquiry into the charges levelled against him and that as per their letter dated 20th November 1970, the management had given an enquiry notice to the first party fixing the enquiry to be to participate in the enquiry with all his witnesses and held on 30th November 1970 and directing the first party assuring him that he would be given full opportunities to defend his case and that the said enquiry notice was acknowledged by the first party and that on 30th November 1970, before commencing the said enquiry, the enquiry officer had explained the entire procedure of the enquiry and the first party was assured by him that he could bring his own witnesses and cross-examine the witness of the management and that thereafter the witnesses on behalf of the management were examnied in support of the charges and their statements were recorded in the presence of the charge-sheted employee in Kannada and the first party had signed the enquiry proceedings and the participated in the enquiry fully and that the first party had also cross-examined the second

party's witnesses at length and that since there was no witnesses on behalf of the charge-sheeted employee, the enquiry was concluded on 30th November 1970 and that the enquiry officer held the first party guilty of the charges levelled against him and since the charges levelled against A. N. Shanbhogue, the first party were grave and of serious nature the management dismissed the first party workman with effect from 7th December 1970 and that the first party was dismissed for committing acts of serious misconduct after following the principles of natural justice and after finding him guilty of the charges in a fair enquiry conducted in that regard. It is denied that the first party workman delivered any explanation in person to the second party management. It is further stated that the complaint made before the Labour Inspector had no relevancy for the present dispute and was brought in the claim statement only to lend colour to the false dispute and that the first party never requested the Enquiry Officer to postpone the enquiry and that the findings of the enquiry officer had basis on facts and truth and the same was not pervese and that the said dismissal order was **bona fide** and the same did not amount to any act of victimisation. It is denied that he first party workman's record during the period of his service with the second party was blemishless or clean and it is denied that the punishment is severe and harsh. It is pleaded that the dismissal order passed against the first party is **bona fide** and based on facts and therefore the first party is not entitled to reistatement with backwages or to any other relief and it is prayed that the reference be rejected with costs to the second party.

5. On these pleadings, the following additional issues were framed on 17th January 1972 :—

(1) Whether the present dispute is an industrial dispute and this Labour Court Mangalore has jurisdiction to adjudicate upon it ?

OR

Whether the dispute raised by Vanijya Shramika Sangha not being an industrial dispute this

Labourt Court Mangalore is incompetent to adjudicate upon it ?

(2) Whether the first party workman was working as a supplier in the second party management for 5 years without any blemish in his records ?

(3) Whether the domestic enquiry held against the first party workman on the charges of wilful insubordination and disobedience to the lawful orders of the superiors, and causing damage to the food stuff and behaving rudely and violently towards his superiors, is proper and fair being in conformity with the principles of natural justice? or is vitiated on any of the grounds pleaded in para 18(a) to (c) of the claim statement ?

(4) Whether the charges levelled against the first party workman are proved ?

(5) Whether the second party is guilty of victimisation of the first party as averred in the claim statement ?

(6) Whether the punishment of dismissal is unconscionably severe and harsh ?

(7) What Award ?

6. On the hearing dated 17th March 1972, Sri K. R. Putturava for the second party submitted that he did not press additional issue No. 1. Hence, my learned predecessor has answered additional issue No. 1 in the terms that the present dispute is an industrial dispute and that this Labour Court, Mangalore has jurisdiction to adjudicate upon it.

7. On behalf of the first party workman, Sri K. Narayana Shanbhogue, Sri Narayana Moolya and Sri P. Ghate, have been examined as W.W. 1, W.W. 2 and W.W. 3 respectively and on behalf of the management Sri K. Seetharama Bhat, Sri Y. Vesudeva Bhat, Sri Velayudhan, Sri

Padmanabha, Sri Janardhana Bhat and Sri Narayana Pothi, have been examined as M.W. 1 to M.W. 6.

8. The second party relies on the domestic enquiry as well as on the evidence adduced before this Court. Now it is well established that if the Labour Court comes to the conclusion that the domestic enquiry has been held properly and in accordance with the principles of natural justice, it need not consider the evidence adduced before it. On the other hand, if the domestic enquiry is held to be not valid then the Court will have to consider the evidence adduced before this Court and see whether the charges are established or not. The charges against the first party workman are at Ex. M-1. The charges have been already referred to in the counter statement of the second party stated above. It is the case of the first party that he was a supplier in Mohini Vilas, the second party hotel. But it is the case of the second party that he was only a helper and not a supplier The fact whetehr the first party workman was a supplier or a helper is very relevant in deciding this case.

9. The first charge against the workman was that on 13th November 1970, he did not attend to his allotted duties of rubbing the cleaned plates kept near the 'thindimanda' and that he was instructed to do so by the supervisor K.N. Padmanabha Rao on the previous night and that when he (workman) was questioned by the said K.N. Padmanabha Rao as to why he failed to obey the instructions given to him, he (workman) replied him saying that he would do the duties according to his own wishes and not according to the instructions given to him and further he insisted on doing helping duties in the supply section. The second charge against the first party workman was to the effect that on 17th October 1970 at about 10-45 a.m. while he was on his duty as a helper in supply section, he (workman) was instructed by K.N. Padmanabha Rao to put good butter milk to the vessel containing 'thairvade' from the stores as curds had been exhausted in the vessel containing thairvade and that instead of adding good butter milk to the said

thairvade, the first party workman poured butter milk diluted with water to the said thairvade thereby spoiling the entire remaining thairvade purposely and intentionally and that he (workman) about Sri K.N. Padmanabha Rao,supervisor of the second party, by saying that he need not instruct him and that there was somebody else to give him notice.

10. It was not disputed that Ex. M-1 was served on the first party workman on 14th November 1970 and it was also not disputed that on 16th November 1970 the first party workman sent his explanation as per Ex. W-12. In the meanwhile he had also been given a show-cause notice on 18th October 1970 as per Ex. M-8 with regard to the thairvade matter on the report of the suprvisor to the management dated 17th October 1970 as per Ex. M-4, he had sent a reply as per Ex. M-6. In Ex. M-6 he had stated to the effect that the supervisor had asked him to put butter milk to the vessel containing thairvade and that he accordingly obeyed his orders and that the supervisor did not raise any objection for the same and that all the thairvade had been sold away and that it was false that they were spoilt. In that he had also stated to the effect that the manager had asked him to withdraw his application which had been filed by him to the Court for computation of his wages and that the manager threatened him that if he did not withdraw the same, he would be dismissed from service and that the allegation against him had been made with **mala-fide** intention and that he should not be given pin-pricks.

11. It is also not disputed that minimum wages for various categories of workers in the hotels had been fixed by the Government and the Supreme Court gave decision in that regard in the year 1969 and it was the case of the first party that the employees of the second party joined the Vanijya Shramika Sangha to secure their rightful wages and the second party did not like that and that while applying the minimum wages to their employees, the second party management put several suppliers in the category of helpers with a view to avoid paying the higher rate of wages and

consequently the arrears which it had to pay with effect from 1st July 1967 and that the first party workman, though was working as a supplier, was treated as helper to avoid paying higher wages of a supplier and being aggrieved by the above action of the second party, the first party had filed an application under Section 33C(2) of the Industrial Disputes Act, 1947 before this Court for computation of the difference in minimum wages and that the same was still pending on the file of this Court. It was also not disputed that for the month of August 1970 the second party had offered to pay Rs. 5 less than the salary which the first party was entitled and similary in the month of September also it had deducted a sum of Rs. 2 out of his salary and it was also not disputed that the first party workman had given a complaint in that regard to the Labour office at Mangalore and a notice (Ex. W-5) had been issused by the Labour Inspector to the proprietor of Mohini Vilas with regard to that complaint and directing him to appear before him in that connection on 12th November 1970 and the management had requested the Labour Inspector for an adjournment and the Labour Inspector had fixed up the meeting on 17th November 1970 at 4 p.m. This is very clear from Ex. W-8. So it is clear that there was difference of opinion between the management and the first party workman before the alleged incidents took place. Naturally the management must have resented the activities of the first party workman in his filing the application before this Court and in complaining against the management to the Labour office. This fact must also be taken into consideration while appreciating the evidence on record

12. On 13th November 1970 the first party workman had sent a letter to the management stating that he was prevented from doing the duty on 13th November 1970 by the supervisor Sri Vasudeva Rao, Sri Velayudhan and Sri Padmanabha Rao and that he was not responsible for not doing his duty as a supplier as he was prevented from doing so. So also on 14th November 1970 he had written another letter to the management to the effect that he was prevented

on 14th November 1970 also from performing his duties and that he was also not given his food, tiffin etc., and that he was entitled for the full wages and that letter had been sent after obtaining the certificate of posting. On 16th November 1970 he sent his explanation to the charges-cum-suspension order (Ex. M-1) by registered post.

13. It is also not disputed that the management suspended the first party workman with effect from 13th November 1970, the date of Ex. M-1. The first party workman gave his explanation as per Ex. W-12 and the management did not accept his explanation. The management by a notice dated 20th November 1970 (Ex. M-2) fixed up the enquiry on 30th November 1970 at 3 p.m. and Sri K. S. Bhat, Advocate Mangalore, who has been examined as M. W. 1 in this court, was appointed as the Enquiry Officer and the first party workman was asked to be present at the time of enquiry and it was stated to him that all opportuniites to defend his case would be given to him and that he could bring his own witnesses in support of his defence and that he may cross-examine management's witnesses. According to the evidence of the enquiry Officer M. W. 1, the enquiry was held on 30th November 1970 at 3 p.m. at Mohini Vilas and the first party workman was present at the time of the enquiry and that he was given opportunities to cross-examine the witnesses and also to examine his own witnesses and the first party workman did not examine any of his witnesses and that the first party workman did not want to give his statement also and he was allowed to be cross-examined by the management. The enquiry officer has given his report as per Ex. M-3 holding that the charges levelled against the first party workman were proved and he left the punishmnet to be imposed to the discription of the management. Ex. M-5 is the papers connected with the enquiry held by the enquiry officer. It contains the statements of witnesses examined by the management and also the other enquiry proceedings.

14. Now it is to be seen whether the domestic enquiry has been conducted according to the principles of natural

justice and whether the first party workman had been given full opportunities to defend himself and to cross-examine the witnesses of the management and whether no irregularities have taken place at the time of the domestic enquiry. The enquiry officer, Sri K. Seetharama Bhat who is an advocate in Mangalore, has been examined as M.W.1. His evidence was to the effect that the enquiry was held on 30th November 1970 at 3 P.M. and that Mr.Janardhana Bhat represented the management and that the relevant documents were placed before him and the first party workman was present and that the charges were read over to him (workman) and explained to him and also the procedure to be adopted at the time of enquiry was explained to the first party and that he (M.W. 1) stated to the workman that he could cross-examine the witnesses for the management and also examine his witness and that then he examined the witnesses for the management and that he that he examined Sri Padmanabha Rao and the first party worker cross-examined Padmanabha Rao and that afterwards Vasudeva Bhat was examined and he was also cross-examined by the first party workman and that he called upon the first party to examine his witnesses and that the first party told him that he had no witness and that he had no statement to be given. M. W. 1 has stated further that the management wanted to cross-examine the worker and he asked them to do so and that again he (M.W. 1) asked the first party if he had any evidence and he told him that he no witnesses and then he (M.W. 1) recorded his further statement and that the worker had signed the proceedings. He has also stated that it was not true that he refused to allow the first party workman to cross-examine the witnesses for the management and that it is not true that the worker moved for an adjournment and that he found that there was no necessity to adjourn the enquiry. In his disposition some portions of the enquiry report Ex. M-5 have been marked as Exhibits W.D. (1) to W.D. (3). It is very clear from his evidence that the enquiry officer put questions to Padmanabha Rao to elicit from him as to what kind of butter milk he had

asked the workman to put into the vessel containing thairvade and the witness has also answered that question by saying that he asked the workman to put good butter milk from the stores and that the diluted butter milk was not in the store room but was outside. The learned representative relying on the above conduct of the enquiry officer in asking the question,submitted that the enquiry officer was leaning towards the management and that he should not have asked that question and that that question has prejudiced the enquiry. He submitted that the Enquiry officer has admitted and it is a fact that the enquiry officer is an office bearer of South Kanara Industrial and Management is Association and that the second party management is a member of that association and that he could not say definetely if on 30th November 1970 he was an office bearer of the association and that he could not say also whether as a member of that association he was appearing before the Labour Court prior to 30th November 1970 as an office bearer. Mr. P. Ghate, learned representative for the first party, submitted that naturally the enquiry officer who is an office bearer of the South Kanara Industrial Managements' Association to which the second party is also a member had bias towards the management and that therefore he should not have enquired into the matter referred to him by the second party. But in my opinion, that itself is not a ground to hold that he was leaning towards the management. As an enquiry officer he could put any question to any witness to elecit an answer which is relevent to the disposal of a case. So his putting a question as per W.D. (1), in my opinion, will not by itself go to show that he was leaning towards the management. His evidence has also been attacked on the admitted markings as per Ex. W. D. (2) and W. D. (3). W. D (2) is a portion in the enquiry report. It is as follows :— "ಇಲ್ಲಿಗೆ ಸದಿ) ಕ್ಯಾನುಭೋಗರ cross-examination ಮುಗಿಯಿತು" ನಂತರ ಶಾನುಭೋಗರು ತನ್ನ ಪರ ಸಾಕ್ಷಿ ಯಾ ತನ್ನ ಹೇಳಿಕೆ ಇಲ್ಲವೆಂದು ಹೇಳಿದರು". Out of the words "ನಂತರ ಶಾನುಭೋಗರು ತನ್ನ ಪರ ಸಾಕ್ಷಿ ಯಾ ತನ್ನ ಹೇಳಿಕೆ ಇಲ್ಲವೆಂದು ಹೇಳಿದರು". the words "ಯಾ ತನ್ನ ಹೇಳಿಕೆ ಇಲ್ಲವೆಂದು ಹೇಳಿದರು", is one line and the spacing in between the line above it and below it is smaller than the spacings in between the other lines written

by the enquiry officer on that page. So Mr. Ghate submitted that the above mentioned words namely "ನಂತರ ಶಾನುಭೋಗರು ತನ್ನ ಪರ ಸಾಕ್ಷಿ ಯಾ ತನ್ನ ಹೇಳಿಕೆ ಇಲ್ಲವೆಂದು ಹೇಳಿದರು" have been subsequently written by the enquiry officer and that he had not written those lines when the enquiry was held. Of course M.W. 1 K. Seetharama Bhat has denied the same. So far as W.D. (3) is concerned, the words "'ನನ್ನ ಪರ ಬೇರೆ ಸಾಕ್ಷಿ ಇಲ್ಲ" is written above the signature of A. N. Shanbhogue, the first party workman. The space in between that word "ಇಲ್ಲ" and line above is also smaller than the other spaces in between the other lines written by him in that page. Of course the suggestion made to the effect that W.D. (3) was added subsequently has been denied by M.W.1 Of course the words "ನನ್ನ ಪರ ಬೇರೆ ಸಾಕ್ಷಿಇಲ್ಲ" is written in thicker ink when compared to other portion written on the same page. In my opinion, a doubt may arise in the mind of a person who looks at those lines that they might have been written subsequently although it cannot be definitely stated that they must have been written subsequently as the witness has denied the same and as the first party workman has not whispered with regard to those portions in his evidence before this court though he has stated to the effect that is was not true to say that he told the enquiry officer that he had no defence witness and that in fact he prayed for time to produce his witnesses.

15. The representative of the first party workman also contained that the cross-examination of the worker, when he did not examine himself was illegal, irregular and vitiated the domestic enquiry and that the finding based partly on the above evidence was illegal. He submitted that when the worker did not want to examine himself he should not have been cross-examined either by the management or by the enquiry officer and he also submitted that the cross-examination stage will only occur if there is examination-in-chief and if there is no examination-in-chief, the witness cannot be cross-examined. But in my opinion, this argument has no force. No doubt cross-examination of a witness generally takes place when the witness is

examined in chief. But merely because the enquiry officer had given an opportunity to cross-examine the witness although the witness has not examined himself, it cannot be held that it is illegal. So the contention in that regard has to be rejected.

16. The next contention of the first party workman was to the effect that from the evidence and pleadings on record it becomes doubtful whether the cross-examination of the first party workman was by the enquiry officer or by the management he has submitted that it is stated by the management in their objection statement that the enquiry officer had put those questions to the witness and it is clear from the evidence of the enquiry officer that he had relied on the cross-examination of the first party workman in giving his finding on the charge of adding diluted butter milk to the thairvade, and that therefore it was clear that the enquiry officer was leaning towards the management and that his finding has prejudiced the worker to a great extent. It is true as submitted by him that in the objection statement filed by the management, the second party has stated as follows in page 6 line No. 8:" Thereafter, the enquiry officer had put certain question to the first party and recorded his answer during the enquiry, So acording to the counter statement filed by the second party it was the enquiry officer who had put the questions in cross-examination to the first party worker. But according to the evidence of M.W. 1, the enquiry officer, it was the management who cross-examined the witness as he states in his examination-in-chief to the effect that the management wanted to cross-examine the worker and that he asked them to do so. Therefore, as submitted by the representative of the first party workman, a doubt is created as to whether the first party workman was cross-examined by the enquiry officer or by the management. If the enquiry officer had put those questions, of course it will go to show that he had leanings towards the management. Otherwise he would not have cross-examined the first party workman when he told him that he had no statement

to make. Of course in the cross-examination the first party workman has stated to the effect that on 17th October 1970 the supervisor asked him to put butter milk which was in the store room and that he put the butter milk which was outside the store room and that butter milk kept outside the store room was always being put to thairvade and that the had been to the store and that he did not find butter milk there and that after the supervisor showed him the same he saw the same in the store room. Of course, the enquiry officer has relised on that statement in his report by saying as follows :—

> " Instead he volunteered himself to pour the diluted butter milk and spoiled the thairvade defying the authority and caused loss to the management. His defence that he usually was putting butter milk from outside the store room is of no avail in-as-much as he has admitted that he had the definite instructions otherwise. It is worth nothing that though the said employee was well prepered to cross-examine the witnesses he conveniently omits to put any questtion to them in this regard. Therefore, I have no hesitation in coming to the conclusion that the first charge of insubordination and disobedience have been proved beyond doubt."

When the management itself has stated in the objection statement that the enquiry officer put those questions to the first party workman, I am of opinion it must be held that the enquiry officer had put those questions to the first party workman and as the enquiry officer has relied on the answers given by the first party workman in his cross-examination, it must be held that it had prejudiced the case of the first party workman to a great extent at the domestic enquiry. So far as that aspect is concerned, the contention of the learned representative of the first party, has much force and has to be accepted.

17. The enquiry report of the enquiry officer M.W. 1 has also been attacked by the first party representative by saying that one of the duties of the enquiry officer was to find out whether the first party workman was a supplier or not when the first party workman was contending that he was a supplier while the management was contending that he was a helper and that the enquiry officer had not done so and that he came to a strange conclusion that the first party workman was a helper-cum supplier especially helping in the stall etc. and that there was no evidence in that regard. The enquiry officer has stated as follows in his report Ex. M-3 at page No. 4 :—

> "With reference to the second charge it had come out in evidence that the duty of the said employee was that of helper-cum suplier specially helping in the stall etc. as he himself had stated."

In para 5 he states as follows :—

> "In-as-much as he was admitting that he was also doing the helper's job in addition to occasional supply work, I find no reason as to why he should disobey the orders of his immediate superior."

In my opinion, the above conclusion arrived at by the enquiry officer is not correct and is not on the basis of any materials before him. It was not the case of either the management or the workman that the first party workman was a helper-cum-supplier. It was the definite case of the management that he was a helper while it was the definite case of the workman that he was a supplier. So the enquiry officer should have come to a conclusion as to whether the workman was a helper or a supplier and he should not have come to the conclusion that he was a helper-cum-supplier. The category of a helper in a hotel is below than that of a supplier as a supplier gets more salary than that of a helper. The duties of a helper are quite different from the duties of a supplier. Therefore, that was an important

point which the enquiry officer had to find out before his giving findings on the charges framed against the workman. It was not disputed and it cannot be disputed that pouring of butter milk into the vessel containing thairvade and also wiping or rubbing of plates in the thindi manda are not the duties of a supplier. They may be some of the duties of a helper. So if the first party workman was a supplier and if he was asked to put good butter milk to the 'thairvade.' vessel and if he had put diluted milk, it cannot be held that it was a misconduct done by the worker because it was not one of the duties of a supplier and the management should not have asked the supplier to put butter milk to the vessel containing thairvade. So also if a supplier defies the orders of the supervisor in not wiping or rubbing the cleaned plates in the thindi manda, it connot be called a misconduct committed by him as supplier. When the enquiry officer, M.W. 1, did not come to a definite conclusion as to whether the worker was a helper or a supplier, his findings that the first party workman had disobeyed the orders of the management and had committed misconducts, are vitiated and cannot be relied on by the management.

18. It is in evidence that the first party workman had sent a letter by registered post to the enquiry officer on 2nd December 1970 as per Ex. W-15 stating to the effect that the enquiry officer did not allow him to cross-examine the witnesses and that certain questions put by him were not recorded by the enquiry officer by saying that they were not relevant and that he did not also give him an adjournment to examine his witnesses although a request was made by him in that regard and that his statement in that regard was also not recorded and that he did not inform him also about the adjourned date and he requested him that the enquiry should be adjourned and the date of adjournment should be informed to him. Of course the letter is dated 30th November 1970, but the postal mark on Ex. W-14, the postal cover, goes to show that the said letter had been posted on 2nd December 1970. The letter has been addressed to Sri K. Seetharama Bhat, enquiry officer C/o Mohini

Vilas, G. H. S. Road, Mangalore-1. Of course that letter was returned to the first party workman stating that addressee was not available. The enquiry officer, M. W. 1, has stated that he was not aware whether such a letter had been sent to him and he has also stated that if when the enquiry was being held such a letter had been sent he would have received it. The first party workman's representative strongly submitted that the enquiry officer must be aware of that letter sent by registered post and purposely the same had been returned to the first party workman saying that there was no such addressee. But in my opinion that contention has no force for the simple reason that in the letter written by the management to the first party workman as per Ex. M-2, the address of Sri K. Seetharama Bhat, enquiry officer, has been given as 'Advocate, Mangalore'. But in the address given on Ex. W-14, Sri K. Seetharama Bhat has not been described as an Advocate and when that letter reached the address Mr. Bhat might not have been in Mohini Vilas and there is absolutely no evidence to show that the letter was shown to some responsible officer like manager or supervisor at Mohini Vilas. In the above circumstances, it cannot be held that Sri K. Seetharama Bhat, enquiry officer (M. W. 1), was aware of the sending of that letter by the first party workman. Such letters are being written by deliquent workmen after an enquiry is closed. Much cannot be made of the letter written by the first party workman.

19. It was easy for the management to have proved that the first party workman was a helper and not a supplier by producing the Acquittance Roll and other documents maintained by them, before the enquiry officer. But they had not done so. The material supplied by the examination of the two witnesses before the enquiry officer will not go to show that the first party workman was either a supplier or a helper. In the above circumstances, it must be held that the management had not proved before the enquiry officer that the first party workman was a helper. Taking this aspect into consideration and taking into consideration

the writings at Ex. W. D. (2) and W. D. (3) and also taking into consideration that the enquiry officer had cross examined the first party workman and also taking into consideration that the findings given by the enquiry officer were vitiated, I am of the opinion, that the management cannot rely on the domestic enquiry conducted by the enquiry officer and also on his report. Therefore, I am of the opinion that the punishment imposed upon the first party workman by the management on the basis of the report of the enquiry officer cannot be relied on. Hence my finding on the additional issue No. 3 is to the effect that the domestic enquiry held against the first party workman on the charges of wilful insubordination and disobedience to the lawful orders of the superiors and causing damage to the food stuff and behaving rudely and violently towards his superiors, is not proper and fair and it is not inconformity with the principles of natural justice and that the enquiry is vitiated on the grounds pleaded in para 18 (d) and (e) of the claim statement, i.e., on the basis of the enquiry proceedings the charges had not been established and the findings of the enquiry officer are baseless.

20. Now it is to be seen whether the first party workman was a supplier or a helper in the second party management, from the evidence adduced by the parties before this court. M. W. 2 Y. Vasudeva Bhat is the manager of Mohini Vilas. He has stated to the effect that the first party was working as a helper and that his pay was Rs. 40 per month and that there were about 50 employees in Mohini Vilas. His evidence also goes to show that one Sri Babu Rao is the proprietor of Mohini Vilas and that he (M. W. 2) was the proprietor of Woodlands Hotel and that he visits Mohini Vilas every day for 15 to 20 minutes and that the Assistant manager may appoint employees with his (M. W. 2's) approval. According to his evidence there are 5 apartments for service in the first floor and that they are kept open only after 4 P. M. and in the ground floor there is a big hall and it is kept open both in the morning and in the evening and that from memory he

could not say the employees in each category. He could not give the particulars of each worker. He says that the categories of workers are mentioned in the bonus register and wages register. He has denied the suggestion that there was no category of helpers earlier to 1967. He has also denied the suggestion that the first party was working as a supplier. M.W. 3 Sri Velayudhan who is working both in Mohini Vilas and Krishna Bhavan, has stated to the effect that the first party workman was not working as a supplier and that he (first party) was bringing the articles of food and handing over them to the supplier for service and that he was keeping the articles at the counter and that he used to keep the articles in the plates and then the supplier would supply them to the customers and that he (first party) used to bring parcels and he used to help the servers and that he was working as a helper. It is also in his evidence that Krishna Bhavan is a Boarding and Lodging house and that Mohini Vilas is only a restaurant and that his name is entered in the attendance register of Krishna Bhavan and that all the names are entered in one and the same register and that the name of workers of Mohini Vilas are at the top and that then the names of the workers of Krishna Bhavan are entered. According to his evidence there are 12 tables in the main hall in ground floor in Mohini Vilas and that when there is rust each supplier would look after 2 tables and when there is no rush one supplier looks after one line of tables i.e., 4 tables. Further he has stated that in the upstairs, in the portico, there are 2 tables, in the centre hall there are 2 big and 3 small tables and that in the three small halls beyond the hall there are 3 tables in each and that there is one supplier in the portico and that if there is rush there are 2 suppliers in the central hall, otherwise one and in the other rooms, one supplier for each room (small halls). So if his evidence is taken, there will be six suppliers on the ground floor. He admits in his cross-examination that there are 12 to 15 suppliers. M. W. 4 Sri. Padmanabha Rao is the supervisor in Mohini Vilas Mangalore. He has also stated that the first party workman was working as helper i.e., to arrange the articles in the manda and to serve the workers and to rub the cleaned plates and that he was

not working as a server to the customers. He has further stated that one Sadashiva Rao was attending to supply and also manda duty and according to rotation the other suppliers attend to duty in the manda. He says in his cross-examination that it is not true that the first party has worked as a supplier. Further he has stated that the first party was working as 'manda' supplier and that he was also called a supplier and that in Ex. M-14 he (M. W. 4) has described the first party as a supplier and that he has written as per Ex. W-16 in Ex. M-4. Ex. M-4 is the complaint given by the above witness (Padmanabha Rao) to the manager of Mohini Vilas which is alleged to have been given on 17th October 1970. With regard to the alleged incident of pouring of diluted milk into the vessel containing thairvade, in third line he has written as follows :

"ತಮ್ಮ ಹೋಟಲಿನ ಸಪ್ಲಯರ್ ನಾರಾಯಣ ಶ್ಯಾನುಭೋಗನು
....."

and has struck out the word 'supplier'. So also in the portion marked as Ex. W-16 he has described the first party workman as 'supplier' Narayana Shanghogue'. Of course he has denied in his cross-examination that the first party was working as a supplier throughout. One Sri. Janardhana Bhat has been examined as M. W. 5. He has stated that Narayana Shanbhogue was working as a helper and that as a helper his duties were namely, (1) to keep the ready made article in the manda, (2) to fetch the estables from the kitchen and hand it over to the supplier and (3) to rub the cleaned plates and keep them in the manda. He has also stated that the first party was not working as a supplier and that suppliers are paid Rs. 50 M. W 5. was the person who was representing the management at the domestic enquiry. Sri Narayana Pothi M. W. 6, is working as a cashier in Mohini Vilas. His evidence was also to the effect that the first party workman was only a helper and not a server. But his evidence will not go to show that he was working in Mohini Vilas at the time when first party workman was working as in his cross-examination M. W. 6

states that he did not remember the date on which he joined duty and that he cannot say if he joined in December 1970 So it is very doubtful whether he was in service when the first party workman was working in Mohini Vilas. As against this evidence of the management the first party workman Narayana Shanbhogue has sworn to the effect that he was working in Mohini Vilas as supplier and that he joined service on 1st November 1965 and that as supplier he was serving tiffin to customers and issuing bills and that he was supplying for two tables. He has denied the suggestion that he was only a helper. W. . 2 Sri Narayana Moolya was working in Mohini Vilas since the last 24 years. He Says that now he is store-keeper and he has been examined as W. W. 2 by the first party to prove that he is a supplier. This witness of course, has sworn to the effect that the first party workman was a supplier for 4 to 5 years. Of course this witness is also a member of the Vanijya Shramika Sangha. He has denied the suggestion made in the cross-examination to the effect that he was not working as a store keeper and that he was working only as a helper. As mentioned above M. W. 4, Sri. Padmanabha Rao describes the first party workman as a supplier in Ex-M-4 which is the complaint given by him to the management with regard to the alleged incident of putting diluted milk to the vessel containing thairvade by the first party workman and he says in cross-examination that the first party was working as a 'manda' supplier and he was called a supplier So his evidence goes to show that the first party workman was called a supplier. It is very clear from the evidence of M. W. 2 who is the manager of Mohini Vilas, that Mohini Vilas maintains bonus register, wage register and it must be also maintaining the Acquittance roll. The second party has not produced any of the registers maintained by it. It was easy for the management to have produced those books to prove that category in which the first party workman was working i.e., either as a helper or a supplier. It has not done so. Hence, an adverse inference will have to be drawn that if those books had been produced by the management, they would have gone against the management. If really the first party workman was a helper as stated by the

management, the hotel supervisor, Sri K. Padmanabha Rao would not have described him as a supplier in Ex. M-4. Even granting for arguments sake that he had wrongly called him as a supplier in Ex. M-4 it was easy for the management to have produced documentary evidence before this court to prove that the first party workman was a helper and not a supplier. It is true, the first party has admitted that in the month of October 1970 he was asked by Padmanabha Rao to put butter milk to 'thairvade' and that he poured concentrated butter milk to thairvade and not diluted butter milk. The learned counsel for the management submitted that if he were really a supplier he would not have poured butter milk to thairvade as it was not the duty of a supplier to do so and as he had done so, it must be held that he was a helper. In his cross-examination the witness has stated that he did it to oblige and carry out the words of Padmanabha Rao. So his evidence in that regrd will not help the management to prove that he did so as it was one of his duties. It is also true the first party workman has stated in his cross-examination that there were no servants called helpers in the hotel and that there were persons who were cutting vegetables and assisting the cooks in the kitchen and that they were called store keepers. Those persons who used to carry the eatables from the kitchen to the counter called suppliers and that they were getting the same salary as himself and that one Sadashiva Rao was also the supplier. As the witness has stated that those persons who carry the eatables to the counter are also called suppliers, the learned representative for the second party submitted that it must be taken to mean that he was also meaning that helpers were called suppliers in Mohini Vilas. But it is not the case of the management that they were called suppliers. If helpers and suppliers were called by name 'suppliers' in Mohini Vilas that fact could have been spoken to by the witnesses for the management examined before this court, but they have not stated so. So the above-mentioned answer of the first party workman in my opinion, will not help the management in proving that the first party workman was only a helper and not a supplier. It is also very significant to note that the

first party workman was not assigned the duties of wiping or rubbing the cleaned plates prior to 13th November 1970. According to the evidence of M. W. 4 even suppliers attend to manda duty. He has stated that according to rotation the other suppliers attend to duty in the manda. So even granting for argument sake that the first party workman was attending to the duties at manda, it cannot be held that he was only a helper. The second party relies on a question put by the worker at the time of domestic enquiry to Vasudeva Bhat. Thequestion put was as follows:—

> "ನಾನು 5 ವರ್ಷದಲಾಗ್ಯಾತು (1ನೇ ನವಂಬರ್ 1965)ರಿಂದ ನಾನು ಅನ್ನ ಬಳಸುವುದು, ಸ್ನಾಲಲ್ಲಿ ನಿಲ್ಲುವುದು, ಕೊಳವೆಯಿಂದ ನೀರು ಕೊಡುವುದು, ದೋಸೆ ತಂದುಕೊಡುವುದು, ಈ ತರದ ಡ್ಯೂಟಿಗಳನ್ನು ಮಾಡುತ್ತಿದೆ ನನಗೆ ಈ ಕೆಲಸ ಕೊಡಲು ಕಾರಣವೇನು ?"

But in my opinion that question will not go to show that the first party workman was doing the work of a helper and not that of a supplier. The question put is not very clear as to whether those services were done by the first party workman to the customers or someone else. In the above circumstances, the question put is very vague. Hence much reliance cannot be placed on the above question. Taking into consideration all the above factors, I am of the opinion that it is not proved that the first party workman was a helper. On the other hand there is sufficient evidence to show that the first party workman was a supplier as he has been described as a supplier in Ex. M-4 and also in view of the evidence of the first party workman and his witness. Hence I hold that the first party workman was a supplier.

21. But it cannot be said that the first party worker had no blemishes before he was given the chargesheet. According to his own application given to the management (Ex. M-7) he says that when he was bringing 'baji' from inside to 'manda' it fell down and that when he was serving rice some portion had fallen down and that he was sorry for the loss caused to the management and requested that

no deduction should be made in his salary. Of course this is an application given to the management on 18th November 1970 after he was chargesheeted. By that time the applicant had given a complaint to the Labour Office complaining about the deductions made by the management out of his salary and it is in evidence that full amount was paid to him after he gave an application as mentioned above. It is also in his evidence that it is true that baji fell down and that it happened so when he was making supply and that it is not true that he was taking baji to arange it in the manda. Therefore, I hold that the first party workman was a supplier in the second party hotel and not without blemishes. Hence my finding on additional issue No. 2 is that the first party workman was working as a supplier in the second party management for 5 years, but not without any blemish in his records.

22. The fourth issue is as to whether the charges levelled against the first party workman are proved. It is clear from the evidence of M.W. 4, Padmanaba Rao that in the month of October, he instructed the first party to add curds to theairvade and that good curds were in the stores and that he received complaints from the customers an there was only water and no curds in the thairvade and that he went and saw and that butter milk used for serving the staff members had been added. Further he has stated that he aquestioned the first party about his work and that he (first party) told him that he would not obey him and that he might make a complaint to the concerned and abused him and that he (M.W. 4) gave a written complaint to the manager. His evidence in that regard has been supported by Velayudhan (M.W. 3) who says that once the first party was instructed by Padmanabha Rao to put good butter milk to 'vade' and that he put butter milk used for meals and therefore 'vade' were not fit to be supplied to the customers. Of course he says in his examination-in-chief that he did not see him pouring butter milk and that he cannot say what talk took place between them since he was at a distance. Before this court Padmanabha Rao, M.W. 4, has stated to the effect that he asked

the first party to add curds and not butter milk. The first party workman, in his evidence, has admitted that in the month of October he was asked by Padmanabha Rao to put butter milk to thairvade and that he poured concentrated butter milk to thairvade and not diluted butter milk and that it was false that Padmanabha Rao took objections and that he defied him. In the explanation given by the first party to the notice issued by the management with regard to the above incident, he has stated among other things, that he had put only good butter milk and that the thairvade were not spoiled and that there was no complaint from the customers. Excepting the evidence of Padmanabha Rao there is absolutely no evidence to show that the first party workman spoiled the thairvade by putting butter milk and that the first party defied Padmanabha Rao. According to his evidence some 10 or 12 persons were present at the time of the incident. But none of them have been examined. According to the second charge the first party was asked to put good butter milk to the vessel containg thairvade and that insted he added dilute butter milk purposely and intentinally. But now before this court PadmanabhaRao says that he asked the workman to put curds. Curds is not 'ಮಜ್ಜಿಗೆ' curds mean 'ಮೊಸರು'. In the above circumstances, it must be held that the evidence given by that witness is in contradiction with the allegations made in the second charge. Anyhow even granting that the first party workman had put diluted butter milk instead of good butter milk to thairvade and spoiled it and in contradiction to the direction given by Padmanabha Rao, yet it cannot be held that there is derilic-tion of duty on the part of the first party workmen because the management has not proved that it is one of the duties of the supplier to add butter milk to the vessel containing thairvade. If the first party workman has not done it properly it cannot be held that there is deriliction of duty on his part. So also his telling Padmanabha Rao when the latter questioned the first party workman about his work, that he would not obey him and that he might make a complaint, has not been proved properly as excepting the evidence of Padmanabha Rao, there is absolutely no other evidence in that regard. The first party workman

had denied it. Therefore, I hold that the second charge has not been proved against the first party workman.

23. So far as the first charge with regard to rubbing of plates is concerned, the manager of Mohini Vilas has deposed that he had instructed Padmanabha Rao to instruct the first party workman to rub the plates from 13th October 1970 and it is also in the evidence of Padmanabha Rao that he had instructed the first party to do so and that he did not attend to the duty and that he came to the dining hall to supply and he was there for some time and he told Padmanabha Rao that he would do the work according to his own wishes and he left the place before the manager came there. Even according to the counter statement the first party was asked to rub the plats as a helper. So it is very clear that wiping or rubbing the plates at the manda was one of the duties of a helper and not of a supplier. So if the first party workman, who has been held to be a supplier by me, was asked to do the work of rubbing the plates, he was within his rights in refusing to do that work. Admittedly the management kept him under suspension with effect from 13th November 1970 because he had not done that duty. Even granting that the first party workman had told Padmanabha Rao that he would do his duties according to his own wishes, it will not amount to using abusive language against Padmanabha Rao. Therefore in my opinion, the first charge is also not proved against the first party workman. So my finding on the fourth issue is to the effect that the charges levelled against the first party workman are not proved.

24. In view of my findings on issues Nos. 2 and 4, issue No. 5 and 6 do not survive for consideration. If it is held that the first party workman was a helper and as a helper, had not obeyed the words of the supervisor on 13th October 1970 in rubbing the cleaned plates, it will amount to disobedience of the lawful orders of the management and the punishment of dismissal would not be severe or harsh. But as I have held that the workman is not a helper but a supplier, the punishment imposed on him is not sustainable. So I do not propose to answer additional issues No. 5 and 6.

25. The last point for consideration is whether there must be an order for reinstatement of the first party work-

man or whether compensation should be given to him in lieu of reinstatement. It is a general rule that renistatement should be ordered where the workman is not found guilty of the charges levelled against him by the management and where the workman is dismissal by the management is held to be not proper. But where there are circumstances when not only the interest of the management but also the interest of the workman would be jeopardized, by reinstatement it should not be ordered and instead of that order must be passed that compensation should be paid. In this case the work of a supplier in a hotel is a very responsible work so far as the management is concerned. As there is no love lost between the management and the workman and as the management has got a grouse against the workman and as it is the case of the management that the first party workman had defied its supervisor, it will be difficult for the supervisor to handle the first party workman if he is reinstate and it will be also difficult, in my opinion, for the workman to work in the restaurant where the management is not well disposed towards him. According to the workman himself the manager had threatened him that he would reap the consequences because he had filed an application in this court. So if he is reinstated the management will be always having close eye on him and easily find out some faults to take action against him. Taking into consideration, all the above facts, I am of the opinion that reinstatement of the workman as supplier with the second party management is not desirable and is not in the interest of both the parties. Hence I will not order for reinstatement of the first party workman. On the order hand, I feel that the ends of justice would be met if the workman is ordered to be paid a lumpsum of Rs. 2,400 being two years' salary in lieu of reinstatement. Many decisions were cited before me by the second party's representative, but the principles enunciated in those citations are not applicable to the facts of this case and hence they are not referred to in this case.

26. In the result, I pass an award in the terms that the management of M/s Mohini Vilas, Ganapathy High School Road, Mangalore-1, is not justified in dismissing

the services of Sri A. N. Shanbhogue with effect from 7th December 1970 and direct the second party management to pay a sum of Rs. 2,400 (Rupees two thousand four hundred only) to the first party workman Sri A. N. Shanbhogue being two years' salary in lieu of reinstatement. In the circumstances of the case, the parties are directed to bear their respective costs.

Mangalore

Dated 10-12-1973.

H. S. VENKATASUBBAIAH,
Presiding Officer,
Labour Court, Mangalore.

ORDER

Bangalore, dated the 28th December 1973

S.O. 4 —**Whereas** by State Government Order No. FCL 809 LLD 71, dated 27th September 1971 the industrial dispute between the workmen and the management of M/s .Mohini Vilas, Ganapathi High School Road, Mangalore-1, was referred to the Labour Court, Mangalore for adjudication.

And Whereas the Labour Court, Mangalore, has submitted to the State Government its award in respect of the said industrial dispute.

Now, therefore, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act 1947 (Central Act 14 of 1947), the Government of Karnataka are pleased to direct the publication of the said award as above in the Karnataka Gazette.

[No. SWL 271 LLA 73]

By Order and in the name of the Governor of Karnataka,

(K. MYLARAPPA)
Under Secretary to Government,
Social Welfare and Labour Department.